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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Note verbale dated 11 February 2000 from the Permanent Mission of Mexico to the United Nations Office at Geneva addressed to the Office of the High Commissioner for Human Rights

The Permanent Mission of Mexico to the United Nations Office and international organizations with headquarters in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to refer to the report contained in Commission on Human Rights document E/CN.4/2000/3/Add.3 on the visit made by the Special Rapporteur on extrajudicial, summary or arbitrary executions to Mexico from 12 to 23 July 1999.

In this connection, the Mission encloses the comments and observations of the Government of Mexico* on the report so that they may be made available to the Commission on Human Rights at its fifty-sixth session as an official document, either in the form of an annex to the report of the Special Rapporteur or, if this is not possible for practical reasons, as a separate document to be distributed at the same time as the report.

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* The annex is reproduced as received, in the language of submission and in English only.

Annex

Comments and observations of the Government of Mexico on the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her visit to Mexico (12-24 July 1999)

The Special Rapporteur acknowledges that the Government of Mexico extended to her its full assistance and cooperation in order to facilitate her work, and that she enjoyed complete freedom in an atmosphere of openness and transparency during her visit to Mexico.

She also acknowledges that in recent decades successive Mexican Governments have initiated a wide range of political and judicial reforms aimed at addressing human rights concerns, including violations of the right to life. In her conversations with government officials, private individuals and non-governmental organizations, she observed that there is general agreement that a gradual change is taking place in Mexico in the attitude of government officials at the federal and municipal levels, and also that there is greater commitment to improving the overall functioning of public agencies and institutions dealing with human rights.

In this context, the Special Rapporteur highlights the statements by the President of the Republic, Mr. Ernesto Zedillo, in which he reaffirmed his determination to do away totally with the phenomenon of impunity and to reform the country's legal system in order to prevent extrajudicial executions. She points out that the representatives of opposition parties and non-governmental organizations, journalists and victims of violations have acknowledged that the number of extrajudicial executions and reports of killings has fallen in the last two years.

The Special Rapporteur points out that examples of practical efforts to move away from past practices were noticeable at all levels of government, and welcomes the continuous reforms undertaken by the Federal Government in recent years and the fact that human rights are a central subject of public debate.

In her conclusions, she says that Mexico has the potential and the administrative mechanisms in place to monitor and overcome the obstacles it faces in protecting the lives of its

citizens and others living in its territory. She stresses that the Federal Government has made efforts in three key areas: access to justice through changes in the judicial and legal system, the promotion of the democratic process, and the political and economic empowerment of local communities. In her recommendations, she urges the Government of Mexico to continue the process of reform it has initiated.

With regard to the so-called "paramilitary groups", the Special Rapporteur stresses that none of the sources she spoke to could provide her with any firm or direct evidence of the alleged link between the Government and those groups.

The Special Rapporteur also states that the scope of her report is limited to the mandate entrusted to her, and that it focuses on the situation in the country at the time of her visit and on certain "key" events in the recent past, in particular the killings in Acteal, El Bosque, Aguas Blancas and El Charco. However, both in her report and in her conclusions and recommendations, she clearly exceeds her mandate by bringing up the subject of the elections and the constitutional role of national bodies such as the armed forces.

The Government of Mexico finds it inadmissible that she should overstep her mandate in this way, and expresses its concern at the fact that comprehensive and detailed information provided to the Special Rapporteur by government sources is omitted throughout the report. This not only leads to a lack of balance and objectivity in the report, but also to the recommendation by the Special Rapporteur of measures that were already being taken, such as the use of electoral observers, or of measures that are not only unrealistic but also go beyond her mandate, such as the proposal that the armed forces should not be used to combat organized crime such as drug trafficking - the principal threat to national security.

For this reason, the Government of Mexico wishes to make the following observations on specific questions raised in the Special Rapporteur's report.

1. The electoral process

In the section of the report on general observations and in the conclusions, the Special Rapporteur refers to alleged fears of heightened tension with the approach of the general election to be held in July 2000, which can lead to outbreaks of violence. The Special Rapporteur recommends "some legitimate form of international presence" and that consideration be given to the possibility of inviting international observers to avoid hypothetical violence.

It is true that electoral campaigns in Mexico are intense. Ours is a participative democracy, but anyone who confuses that with instability knows little about our history and less about democracy.

As far back as 1994, an electoral reform was introduced allowing the General Council of the Federal Electoral Institute (IFE) to regulate the presence of "foreign visitors" interested in following the federal electoral process. Further reforms were carried out in 1996, and have allowed the international community to observe that elections in Mexico are fair, transparent and of high quality in all respects. In 1994, 82,000 national observers and 950 foreign visitors from 34 countries observed our elections and in 1997, 35,000 national observers and 398 foreigners from 30 countries witnessed the election that took place in that year.

In 1994, 77.8 per cent of the population voted in the elections, although voting was not compulsory, and in 1997, 62 per cent voted. There was no violence in either of the two federal elections.

Moreover, at the request of the United Nations and following recognition of the quality of the electoral services it provides, IFE has provided technical assistance to 15 countries through 24 different missions to organize elections and improve their technical quality.

Once again, IFE has issued a notification concerning the general election in 2000 so that foreign visitors who wish to follow the electoral process may do so, making use of all the facilities made available for this purpose by the Mexican authorities.

In 1994 and 1997, technical cooperation programmes were set up with the Electoral Assistance Division of the United Nations, through the United Nations Development Programme (UNDP), to train national observers and assist foreign visitors observing the election. On the basis of the excellent results of previous years, a new technical cooperation agreement was signed with the United Nations in November 1999 concerning the elections in 2000.

All of this was brought to the attention of the Special Rapporteur and it is regrettable that she did not take it into account when writing her report. The Special Rapporteur's recommendation that our electoral process should be followed by international observers is not only superfluous in the current political situation in Mexico, but is also outside her sphere of competence.

2. Role of the armed forces

In the section on general background and in the chapters on conclusions and recommendations, the Special Rapporteur recommends that the Government of Mexico should demilitarize society, and requests it to avoid deputing the armed forces to maintain law and order or to eradicate crime.

It is disturbing that the Special Rapporteur did not notice during her journey to Mexico that the armed forces' contribution to the maintenance of law and order is made within the framework of the law, at the request of the civil authorities and under the control of those authorities.

There are occasions in many democracies when the armed forces have to be called upon in order to preserve the rule of law. No country would accept criticism of the use of the armed forces by the legitimate authorities in compliance with its laws. The United Nations High Commissioner for Human Rights herself, Ms. Mary Robinson, said as much during her visit to Mexico in November 1999, when she pointed out that the role of the armed forces within a country is a question for that country as it is a matter directly related to the sovereignty of that country.

On the other hand, in cases where human rights violations by soldiers have been detected, the full force of the law has been brought to bear in punishing those responsible. In paragraph 22 of the report, the Special Rapporteur says she was alerted to cases relating to abuse by the police and the excessive or arbitrary use of force by the military, though she does not specify what these cases are. The Government of Mexico kindly requests the Special Rapporteur to give it details of the allegations she is referring to so that it can carry out the appropriate investigations. As the Special Rapporteur could observe, it is in the interest of the Government of Mexico to investigate allegations so that it can punish anyone responsible for practices that violate human rights.

3. Situation in Chiapas

In the section on general background and the chapter on recommendations of the Special Rapporteur's report, there are a number of inaccuracies concerning the origin and course of events in Chiapas since the invasion by the Zapatista National Liberation Army (EZLN) in 1994. And there is no mention of the government initiatives to resolve the conflict, even though these were explained to her in ample detail. Consequently, this part of the report too is biased and lacks objectivity.

In the conclusions, the Special Rapporteur fails to mention the Government's seven-point strategy to resolve the conflict in Chiapas, which was also explained to her in detail and on

which she was provided with copious documentation. Nor does she refer to the Government's social policy to attack the causes of the conflict, or to the specific political initiatives to bring the EZLN to the negotiating table that were introduced throughout 1998 and continued in 1999.

To be specific, with regard to the origin of the conflict, in paragraph 19 the Special Rapporteur claims that the EZLN "mounted a brief armed uprising against the Federal Government in protest against alleged repression by the army and police and to voice demands for greater autonomy, economic empowerment and respect for the indigenous communities". It should be recalled that the First Declaration from the Lacandona Jungle issued by the EZLN in 1994, which can be found on the group's Web site, contains a declaration of war on the Mexican Government and army, and announces the intention of the EZLN to advance to Mexico City, its demand for the overthrow of the President of the Republic and its proposal to establish a socialist system in Mexico.

In the same paragraph, the Special Rapporteur states that 12 days after the beginning of the conflict a ceasefire "was declared", but she does not explain that this was a unilateral decision by the Government of Mexico, showing a clear willingness to find an honourable, peaceful and lasting solution to the demands of the Zapatistas and, above all, to avoid spilling the blood of Mexicans.

On the question of the San Andrés Larráinzar accords, the Special Rapporteur claims (without indicating her sources) that "the Government feared that implementation of the accords would deprive disadvantaged groups within the indigenous communities of their individual rights, in favour of the collective rights of the indigenous population". The Government of Mexico has never subscribed to this argument; nor has the argument been used by its critics or Zapatista sympathizers. Government officials explained quite clearly to the Special Rapporteur, although she did not mention it in the report, that the Government and the EZLN have different interpretations of the San Andrés accords and, in particular, the Government's observations on the so-called Cocopa (Commission on Concordance and Pacification) project. They also told her

that various legislative initiatives on the question are now being considered in the Mexican Congress, including one from the Federal Executive and another from the National Action Party, which may be put aside, amended or rejected by the legislators, and so it is up to the legislature to facilitate progress in legislation on indigenous communities.

Moreover, in the same paragraph it is pointed out that the Government has not recognized the so-called autonomous municipalities, without mentioning that the latter have no constitutional or legal basis whatsoever and that they were imposed by force by the EZLN.

The Government of Mexico wishes to emphasize that subsequent to the Special Rapporteur's visit, the Minister of the Interior issued, on 7 September 1999, an open letter to the EZLN entitled "One more step", in which he once again reiterated the Government's strong desire for a resumption of the political dialogue with the EZLN and for a return to normality.

4. Acteal

With regard to the massacre in Acteal on 22 December 1997, the Special Rapporteur basically raises questions on three points: the way in which those arrested were identified, the procedure used to arrest a group of those accused, and the fact that the role and responsibility of high-level state officials was not investigated.

The Government of Mexico wishes to reiterate that those arrested were all charged and pointed out by the people who had actually been attacked; some of those arrested were identified on more than a dozen occasions, while accusations were made against the others on three or four occasions at least. There were no random arrests, contrary to what is said in paragraph 33 of the report. All those arrested were identified beforehand by the victims; in fact, in some cases the police had to intervene to avoid violent confrontations between survivors or witnesses and the accused. All identifications were confirmed in court.

With regard to arrest procedures, it should be mentioned that the action leading to the arrest of those persons was coordinated by federal, state and municipal officials. It is not true that arbitrary detentions took place, since arrest warrants were issued prior to all the arrests and were enforced in the way deemed most likely to avoid acts of violence.

With regard to the investigation and punishment of state officials, the public right of action has been exercised at the highest levels of government, as shown by the fact that the State Minister of Public Security has been remanded in custody. In the administrative sphere, the clarification of responsibilities led to the disqualification from public office of top-level officials, such as the Attorney-General of the State.

The exercise of the public right of action in Mexico is subject to specific and perfectly clear legal criteria, which is why, in accordance with the existing legal framework, it was not possible to establish automatically any criminal or administrative responsibility at a higher level, without legally determining direct criminal responsibility. The former Governor of Chiapas testified on two occasions before the federal Public Prosecutor's Office, which concluded that there had definitely been no selective impunity.

With regard to the level of compliance with the recommendation of the National Human Rights Commission (CNDH), by 14 January 2000 the Office of the Attorney-General of the Republic had complied fully with all details of the recommendation.

5. El Bosque

In paragraph 41 of the report, the Special Rapporteur says that CNDH did not recommend prosecution of the police officers or members of the armed forces involved in the deaths of eight civilians in a shooting incident in El Bosque, (Chiapas) on 10 June 1998.

On this point, the Government of Mexico considers it relevant to point out that, on the basis of the investigations carried out by CNDH itself, it has been established that the deaths of the eight civilians were caused by the impact of shells fired from a gun during a clash between them and members of the state public security forces. In other words, the deaths were not the result of summary executions but the result of a direct clash between two groups, in hostilities started by the civilians. For this reason, CNDH did not make a recommendation that the police officers involved should be prosecuted.

6. Aguas Blancas

With regard to the events in Aguas Blancas, (Guerrero) on 28 June 1995, the Special Rapporteur, in paragraph 54 of the report, expresses her disquiet at the fact that the Federal Attorney-General of the Republic (PGR) did not take up the case. In this connection, Mexican officials explained to the Special Rapporteur that Mexican legislation lays down very precise criteria, subject to the connexity rule, for determining competence in cases, as provided for in the second paragraph of article 10 of the Federal Code of Criminal Procedure, so that the declaration of competence is not discretionary.

Obviously, the Special Rapporteur has not fully understood Mexican legislation, since she says she was not convinced by the reasons given to her by the federal Attorney-General, according to which CNDH, was in fact competent. The Special Rapporteur does not appreciate that the authority of CNDH is entirely optional, in accordance with article 60 of the Act establishing it, insofar as the connexity rule provided for in article 10 of the Federal Code of Criminal Procedure clearly restricts the declaration of competence to multiple offences. Moreover, the Special Rapporteur claims that the fourth paragraph of article 14 of the Basic Law of the Federal Attorney-General's Office is applicable, but this refers to special prosecutors and has nothing to do with the power of the PGR to declare itself competent.

CNDH itself, in its recommendation on the Aguas Blancas case, found that it contained nothing that would bring it within federal jurisdiction. Likewise, the Supreme Court, in its ruling on the matter, stated that the criminal offences were naturally being tried by the courts of the State of Guerrero.

7. El Charco

With regard to events in El Charco, (Guerrero) the Special Rapporteur recognizes that there are different and conflicting versions of exactly what happened at Caritono Maldonado Pérez boarding school in that area on 7 June 1998. Nevertheless, she says that, although it is impossible to determine all the facts, some versions suggest that the armed forces acted with excessive force, and she claims that soldiers carried out summary executions, suggesting that a massacre took place, not a clash between armed civilians and members of the army.

It is clear that in this case the Special Rapporteur accepted as accurate a version of events that is not even supported by the evidence she herself collected, since she takes it for granted that the victims were not armed. The empty cartridges found in the classroom show that shots were also fired from inside the school.

The Special Rapporteur's statements that a massacre took place are contradicted by the various forensic tests carried out, which definitively ruled out the possibility of extrajudicial executions. The fact that there were no casualties among the soldiers of the Mexican army, as mentioned by the Special Rapporteur herself in paragraph 64 of her report, in no way permits the conclusion that no clash took place.

The Special Rapporteur has been provided with a videotape showing high-powered weapons and the nature of the discussions held inside Caritino Maldonado Pérez school by a group of armed civilians; they were certainly not talking about farming problems, as she claims.

A straightforward reading of the testimony she collected should have enabled her to spot the contradictions that render unlikely the version that she has nonetheless chosen to accept.

It is important to emphasize that officials from ordinary, federal and military courts were involved in the investigation of the events and that the suspects have had the benefit of due legal process, during which sentences have already been confirmed at second instance. The defendants enjoyed all their rights of defence during the trial.

The file opened by CNDH (No. 98/3389) was still at the compilation stage and so the information given to the Special Rapporteur cannot be taken as conclusions, from the investigations, but only as information suppiied by CNDH during her visit.

The national ombudsman cleared the army of responsibility when his investigations established that there had been no summary executions but a clash initiated by the civilians, as the Special Rapporteur was told during her talks with CNDH.

8. Other communications

In paragraph 65 of her report, the Special Rapporteur refers to information received on a large number of cases of extrajudicial killings and impunity for those responsible for these violations. She then goes on to say that extrajudicial killings seem to occur throughout the country. The Government of Mexico requests the Special Rapporteur to provide it with a list of cases in support of this claim so that it can take the necessary legal steps.

Human rights defenders and journalists

With regard to the threats against human rights defenders, it would be useful if the Special Rapporteur sent information on the cases reported to her so that the measures needed to

guarantee their security and investigate the events can be taken quickly, as has been done for every allegation on this point received by the competent authorities.

With regard to the case of Ms. Digna Ochoa, in August 1999 CNDH opened complaint proceedings and drew to the attention of the competent authorities the concern of some members of the Agustin Pro Juárez Human Rights Centre concerning threats against Ms. Ochoa, who is a lawyer. These authorities immediately offered her personal protection, but it was only on 23 November that Ms. Ochoa accepted police protection from the Attorney-General's Office of the Federal District.

As far as journalists are concerned, there is total freedom of expression in Mexico, as the Special Rapporteur, whose visit received wide press coverage was able to observe.

Since the establishment of CNDH, a programme has been set up to deal with attacks on journalists, and this has later been extended to cover civilian human rights defenders. In May 1997, a coordinating mechanism was set up to deal with all cases of people working in the media or human rights defenders who were attacked by any official.

In the area of government policies, the Ministry of the Interior, through its national programme to promote and strengthen human rights, published in December 1998, set up a complaints office and a 24-hour telephone line to record threats to or attacks on journalists.

If anyone from the press believes their work is being hindered or their rights violated, there are agencies to lodge and investigate complaints, and also authorities to decide upon emergency measures to safeguard their well-being.

Women in Ciudad Juárez

The Special Rapporteur concludes in her report that complaints about the killing of women in Ciudad Juárez do not fall within her mandate, and she has thus referred them to the

Special Rapporteur on violence against women. Nevertheless, in her account of the events, the Special Rapporteur omits to mention the large amount of information on preventive measures taken that was given to her by the special prosecutor working on the case; as a result of these measures, there has been a significant reduction in the number of incidents and the majority of cases have been solved, with most of those responsible having been apprehended.

Violations of the right to life and sexual orientation

The Special Rapporteur makes a brief reference in her report to the reports received on the killing of homosexuals and states that the Mexican authorities handle these cases with indifference because of the sexual orientation of the victims. This statement is not only unfounded but also contradicts what was explained in great detail to the Special Rapporteur with regard to the reforms of the Penal Code of the Federal District, which make it an offence to discriminate on grounds of sexual orientation, among other reasons. This legal definition includes, as the Special Rapporteur was told at the time, actions to provoke or incite hatred or violence because of the sexual orientation of a person, as well as harassment for the same reason.

Capital punishment

The Special Rapporteur refers to alleged statements by officials to the effect that Mexico is considering reintroducing the use of the death penalty, while ignoring the firmly abolitionist stance taken by Mexico at the national and international level on this subject. The death penalty has not been applied in Mexico since 1937 and under the Constitution it is strictly reserved for the most serious cases, such as treason during a war with a foreign Power.

The Government of Mexico does not believe that capital punishment is the answer to the crime problem, and is convinced that its use as a deterrent has not been effective and has in fact led to the deaths of innocent people.

Moreover, attorney-generals from all over the country have proposed an amendment to the Mexican Constitution to abolish the death penalty once and for all, and capital punishment is resisted as strongly as possible in the case of Mexicans abroad who have been sentenced to this penalty.

9. Independence of the Public Prosecutor's Office

With regard to this recommendation, it should be explained that the Federal Public Prosecutor's Office is headed by a Federal Attorney-General of the Republic appointed by the President and endorsed by the Senate, a fact which guarantees that person's independence.

10. Comments on the conclusions and recommendations

In summary:

(a) Mexico pursues a policy for the promotion and protection of human rights, and makes continuous efforts to foster a culture of full respect for all human rights at all levels of government and civil society, within the framework of ever-greater consolidation of our democracy. As the Special Rapporteur herself acknowledges, the Government of Mexico has in recent years adopted a number of important measures in fundamental areas to improve the human rights situation;

(b) The fight against impunity is one of the priorities of the Mexican Government. As part of the programme to combat impunity, CNDH has issued a series of recommendations which have led to the impeachment and punishment of public officials who have violated human rights, without heed to administrative rank or economic and social status. In 1999 alone, 113 public officials, 13 at the federal level and 100 at the state level, were sanctioned in accordance with CNDH recommendations;

(c) The Mexican Government has demonstrated its clear willingness to strengthen the non-jurisdictional human rights system, as shown by the amendment and addition to article 102, section B of the Constitution, which grants full autonomy to CNDH. In accordance with its new autonomous status, this body will submit an independent annual report;

(d) In Mexico, there is no policy of harassment of human rights defenders. The Mexican Government reiterates its condemnation of any act that harms the well-being of persons dedicated to the cause of human rights. Any threat of this sort that is reported to domestic agencies is investigated immediately. With regard to defenders, Mexico has legal mechanisms to provide prompt precautionary measures for people who receive threats or are attacked, and it will continue to respond promptly to any harassment of these people. Likewise, relations between the Government and organizations from civil society seeking speedy and direct channels of communication have been improved;

(e) It is a sign of the political and democratic openness of Mexican society and of the Mexican Government's policy of full cooperation with the international human rights bodies that a searching debate on human rights is taking place nationwide. This explains why many of the Special Rapporteur's recommendations were already on the national agenda even before her mission to Mexico.

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